



10-6-2009

TENNESSEE DEPARTMENT OF
CHILDREN'S SERVICES, Department/,
Petitioner, vs. QUINCY RAMSEY, Grievant/,
Respondent.

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

TENNESSEE DEPARTMENT]	
OF CHILDREN’S SERVICES,]	
<i>Department/Petitioner,</i>]	
]	
vs.]	Docket No. 26.43-100728J
]	
QUINCY RAMSEY,]	
<i>Grievant/Respondent.</i>]	

INITIAL ORDER

This contested administrative case was heard on October 6, 2009, at the Mountain View Youth Development Center in Dandridge, Tennessee, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State, and sitting for the Civil Service Commission for the State of Tennessee. Ms. Julie Randall Pablo, Assistant General Counsel for the Department of Children’s Services, represented the Department/Petitioner. The Grievant/Respondent, Quincy Ramsey, was represented by his legal counsel, Mr. Thomas V. Testerman. Upon conclusion of the hearing, the matter was taken under advisement and the parties were directed to submit their Proposed Orders by December 7, 2009. The Department filed its Proposed Order on November 20, 2009; the Grievant did not submit a Proposed Order. The matter was declared ready for consideration on December 7, 2009.

PROCEDURAL HISTORY

The Grievant’s State employment was terminated by the Superintendent of the Mountain View Youth Development Center, effective March 3, 2008. The Grievant appealed that decision to the Commissioner of the Tennessee Department of Children’s Services, who convened a Level IV Hearing on August 29, 2008. After considering the facts and circumstances surrounding the Grievant’s alleged misconduct, the impact of the Grievant’s conduct on the Department and its mission, and the impact of the media publicity (related to the Grievant’s arrest) on his ability to continue to function effectively as a Department employee, the Commissioner affirmed the Superintendent’s decision.

This contested administrative proceeding was a *de novo* Level V Disciplinary Hearing convened at the Grievant's request, to consider the termination of his State employment by the Commissioner of the Department of Children's Services for: (1) *Negligence in the performance of duties*; (2) *Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees*; (3) *Gross misconduct or conduct unbecoming an employee in the State service*; (4) *Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency*; and (5) *For the good of the service as outlined in T.C.A. 8-30-326*; and (5) *Pursuant to Department of Children's Services Administrative Policy Index #4.12, Suspension/Termination of Staff for Alleged Criminal Acts*. Upon consideration of the evidence and arguments, and the entire record, it is determined that the Grievant engaged in certain impermissible conduct, and that the appropriate disciplinary action is termination from state employment. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Grievant began his employment as a Children's Services Officer with the Department of Children's Services in June 2003. His duties required that he interact with and supervise juveniles in the custody of the State. He was assigned to the Mountain View Youth Development Center ("Mountain View" or "MVYDC") at Dandridge, Tennessee.

2. Mountain View is a juvenile correctional facility which houses males between 13 and 19 years of age, following Juvenile Court commitments to the custody of the Department of Children's Services, primarily for delinquent¹ behavior.

3. During his brief tenure with the Department, the Grievant was disciplined on multiple occasions. In less than three years, he received at least five separate sanctions, including the following:²

¹ "Delinquent act" means an act designated a crime under the law, when committed by a minor. See TENN. CODE ANN. §37-1-102(b)(9).

² The accuracy of this list of disciplinary actions was stipulated by the parties during the hearing.

DATE	CONDUCT	DISCIPLINARY ACTION
1/27/04:	Failure to report an arrest	<i>Written Warning</i>
4/26/04:	Negligence [Leaving a student on the unit]	<i>3-day Suspension</i>
3/15/05	Negligence [Playing cards with students]	<i>5-day Suspension</i>
4/12/05	Negligence [Allowing student to leave line movement without being detected]	<i>5-day Suspension</i>
3/7/06	Negligence [Falsification of documents]	<i>5-day Suspension</i>

4. In October 2006, the Grievant’s employment with the Department was involuntarily terminated; however, following a contested administrative hearing, he was reinstated to his position on October 16, 2007 with full back pay and benefits.³ In the time between his termination and subsequent reinstatement, and again shortly following his reinstatement, the Grievant was the object of ongoing criminal investigations and the subject of attention by the news media.

5. In December 2007, the Grievant’s girlfriend filed a criminal assault charge against him.⁴ In early January 2008, police officers served the assault warrant on the Grievant at the address in Cocke County that he had listed as his residence in his State personnel file. In the process of arresting the Grievant on the outstanding warrant, the officers discovered a large quantity of drugs (marijuana and hydrocodone), drug paraphernalia, illegal “moonshine” and a large sum of cash in his residence. During his hearing, the Grievant denied that he actually lived at that address, but said that he was just visiting his parents at the time of his arrest.⁵ His credibility on that issue was called into question by

³ The specific allegations and factual basis for the 2006 sanction are not at issue here, and will not be considered when deciding the current case. The 2006 termination and 2007 reinstatement are only referred to in this Order to establish the timeframe during which the Grievant was not required to report for work at Mountain View, but during which he was later retroactively declared to still be an employee of the Department.

⁴ The Department submitted photographs [Hearing Exhibits # 1-5] of the girlfriend, Lisa Clevenger, that were taken the day after the alleged assault, depicting various bodily injuries. However, Ms. Clevenger did not testify during the hearing, so there was no direct evidence connecting her injuries to the alleged assault. The assault charges were still pending in the criminal justice system at the time of this Civil Service hearing on October 6, 2009.

the facts that he kept clothing and personal effects at that address, and he had listed it as his residence on official documents that he filed with the Department.

6. The facts surrounding the Grievant's arrest for assaulting his girlfriend (Lisa Clevenger), and the discovery of illegal drugs, alcohol, paraphernalia and a large sum of cash were reported in several local newspapers. The Department submitted copies of articles appearing in the *Newport Plain Talk*, the *Morristown Citizen Tribune*, and the *Knoxville News Sentinel* (an article also reported by the *Associated Press* wire service),⁶ all of which identified the Grievant by name and address, and linked him to the domestic assault charge and the discovery of drugs in his residence. The article in the *Morristown Citizen Tribune* also reported that the Grievant was a "Corrections Officer at the Mountainview [*sic*] Youth Development Center in Dandridge."

7. Mountain View Youth Development Center is a relatively small facility that employs members of the local community. The community surrounding the Center is small, and primarily rural. Those newspaper accounts contributed to the Grievant's reputation at the Center and in the community at large. Testimony at the hearing indicated that the Grievant's reputation, both at the Center and in the surrounding community, was that of "a woman beater" and "a drug dealer." According to the Mountain View Superintendent, the Grievant lost the trust and respect of his colleagues and his superiors.

8. When the Department learned of the Grievant's December 2007 assault allegation, it began an Internal Affairs investigation to determine whether Departmental disciplinary action was warranted. As part of its investigation, the Department found an Investigation Summary that was completed by its Child Protective Services Division in 2006, which determined that the Grievant had placed his minor daughter in physical jeopardy while he was assaulting the child's mother, Nicole White. [See Hearing Exhibit #11.] It is unclear why that document did not come to light until the December 2007 investigation was begun. Also, between the date of his 2006 termination and subsequent

⁵ The Grievant claimed that he had lived for several years in the homes of a series of girlfriends, but offered no witnesses or supporting evidence to corroborate that testimony.

⁶ Copies of the articles were admitted as Hearing Exhibits #6-8.

reinstatement in October 2007, the Grievant was indicted on a criminal charge of assaulting Nicole White. The Grievant did not report that arrest to the Department when he was reinstated. When the Superintendent subsequently learned of the offense, and asked the Grievant why he failed to report the assault indictment and arrest, he responded that the Superintendent never asked him about it.

9 Based on the results of the Internal Affairs investigation, the Superintendent of Mountain View Youth Development Center scheduled a Due Process Hearing to provide an opportunity for the Grievant to respond to the accusations contained in the Superintendent's February 22, 2008 Recommendation for Disciplinary Action.⁷ Rather than appearing at the scheduled hearing, the Grievant submitted a written denial of the charges, and the Superintendent terminated the Grievant's employment, effective March 3, 2008. In a subsequent appeal hearing before the Commissioner of Children's Services, it was determined that the Grievant had violated various State employee Rules and Regulations, and Departmental Policies and Procedures, and the Superintendent's termination decision was upheld.⁸ The Grievant appealed that decision, and the instant hearing was scheduled to consider his appeal.

CONCLUSIONS OF LAW and ANALYSIS

1. The Tennessee Department of Children's Services is the Petitioner in this matter, the party that initiated the proceedings, and as such, is assigned the "burden of proof." The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the "greater weight of the evidence," or "the more probable conclusion, based on the evidence presented." The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard to any issue. *See*, Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. In the instant case, that means that the Department of Children's Services must prove, by a preponderance of the

⁷ See Hearing Exhibit #12.

⁸ See Commissioner's letter to the Grievant, dated September 10, 2008.

evidence, that the Grievant's employment was terminated in accordance with *The Rules of the Tennessee Department of Personnel*, Disciplinary Action, Chapter 1120-10, TENN. COMP. R. & REGS, and/or the *Department of Children's Services Administrative Policies and Procedures*; and that separation from State employment is the appropriate disciplinary sanction.

2. The Department of Children's Services has promulgated certain Administrative Policies and Procedures that are binding on, and govern the conduct of its employees. Those Policies and Procedures reflect the Department's determination that, due to the highly visible and sensitive nature of their duties, and the vulnerable population that they serve, its employees should, in certain instances, be held to a higher standard of conduct than other State employees. In the instant case, the Department alleged that the Grievant is subject to disciplinary action pursuant to the following directive:

Department of Children's Services, Administrative Policies and Procedures: 4.12 (Effective Date: 2/01/1998)

Subject: *Suspension/Termination of Staff for Alleged Criminal Acts*
Application: To all Department of Children's Services Employees.
Policy: The Department of Children's Services will initiate action to investigate the circumstances surrounding the arrest, or indictment or conviction of an employee to determine if disciplinary action is appropriate. **Disciplinary action may be appropriate if an arrest, or indictment or conviction affects the employee's ability to perform his/her job.** This policy does not imply that an arrest in and of itself is grounds for disciplinary action; **neither does it require a criminal conviction before disciplinary action is appropriate.**
[Bold emphasis supplied.]

Under the provisions of that directive, it is clear that a conviction on the criminal charge is not required before the Department takes disciplinary action against an employee.

3. The **Procedures** section of DCS Administrative Policies and Procedures 4.12 ["DCS 4.12"] include the affirmative obligation of Departmental employees to report an arrest, indictment or conviction for a criminal offense within 24 hours following the event, and provides that "Concealment of an arrest, or indictment or conviction is grounds for disciplinary action, up to and including termination." It also provides for an

informal hearing before an appropriate supervisor, not to decide the employee's guilt or innocence, but "to determine whether there is a reasonable likelihood that the event will reduce the public confidence in the department or affect the employee's ability to perform his/her job assignment." And, before making a decision regarding disciplinary actions, the **Procedures** section of DCS 4.12 recommends that certain factors be weighed by the Department. Those factors include:

- The employee's position, duties and responsibilities.
- Media coverage of the event.
- Client (child and family) awareness of and reaction to the event.
- Other employees' knowledge and reaction.
- The employee's work record.
- Whether the alleged conduct involved moral turpitude.
- Any unusual circumstances surrounding the incident.

4. In this case, the Grievant held the position of Children's Services Officer, and was assigned to directly supervise delinquent juveniles who had been committed to the State's custody for criminal behavior. While employed in that capacity, he was charged with assaulting two women with whom he lived and/or fathered a child, and was linked to a large stash of drugs and illegal alcohol, and a large sum of currency that were found in his residence. Those accusations of assaultive behavior and drug involvement were widely publicized and well-known in the Grievant's workplace and the surrounding community, contributing to his general reputation as "a woman beater" and "a drug dealer." With good reason, Mountain View's Superintendant and the DCS Commissioner concluded that the Grievant's ability to perform his job assignment of supervising delinquent juveniles had been compromised, and that continuing to employ the Grievant as a Children's Services Officer would "reduce the public's confidence in the Department." Whether he was guilty of those charges or not, the damage to the reputations of both the Grievant and the Department was clear. Additionally, it is noted that, under the provisions of DCS 4.12, the Grievant's failure to disclose the indictment and arrest for assaulting Nicole White because his supervisor "did not ask him about it" is "grounds for disciplinary action, up to and including termination."

5. *The Rules of the Tennessee Department of Personnel, Disciplinary Action, Chapter 1120-10, TENN. COMP. R. & REGS*, also describe certain prohibited conduct for all

State employees that may result in disciplinary action being taken against them. As a State employee, the Grievant knew, or should have known, of the application of those *Rules* to his conduct. Those *Rules* contain the following provisions:

1120-10-.06 EXAMPLES OF DISCIPLINARY OFFENSES. The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

* * *

(2) Negligence in the performance of duties.

* * *

(4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.

* * *

(8) Gross misconduct or conduct unbecoming an employee in the State service.

* * *

(12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage.

* * *

(24) For the good of the service as outlined in T.C.A. 8-30-326.

6. **Re: NEGLIGENCE:** The Department alleged that, in addition to violating the Department's own Policies and Procedures, the Grievant's conduct constituted "Negligence in the performance of [his] duties" [Rule 1120-10-.06(2), TENN. COMP. R. & REGS]. The Department contends that, when he was reinstated to his position in October 2007, his failure to report his indictment for assault amounted to negligence in the performance of his duties. Failure to perform an act that is required by his job is generally held to be negligence. In this case, it appears that the assault indictment was handed down during the period between the Grievant's October 2006 termination and his October 2007 reinstatement. The Grievant argued that, since he was not technically employed by the Department at the time, he had no obligation to report the indictment after he was reinstated. However, when he was reinstated to his former position, it was with "full back pay and benefits," effectively restoring him to his job as though he had never been away. Consequently, upon his return to the job, he was required to make any disclosure of events that would have been required if he had been employed when they

occurred. Clearly, that reasoning would apply to anything as substantial as a criminal indictment, which could have an impact on his suitability to occupy the position of Children's Services Officer. It is therefore concluded that failure to report the indictment constitutes "negligence in the performance of his duties," as contemplated by the Personnel Rule.

7. The Department next charged that the Grievant (a) "Fail[ed] to maintain satisfactory and harmonious working relationships with the public and fellow employees" [Rule 1120-10-.06(4), TENN. COMP. R. & REGS]; (b) Engaged in "conduct unbecoming an employee in the State service" [Rule 1120-10-.06(8), TENN. COMP. R. & REGS]; and (c) Participated in an "action that would seriously disrupt or disturb the normal operation of the agency, institution [or] department . . ." [Rule 1120-10-.06(12), TENN. COMP. R. & REGS]. All of these allegations arose from the Grievant's January 2008 arrest for criminal assault, and the discovery of illegal substances in his home at the time of his arrest.

7a. **Re: WORKING RELATIONSHIPS:** The Department argued that the Grievant's arrest, the circumstances surrounding that arrest, and the attendant media publicity damaged the public image of the Department and Mountain View, and harmed the Grievant's relationship with the arresting agency and local law enforcement personnel. Whether the allegations of criminal conduct are true or not, it is clear that his arrest had a negative effect on the Grievant's reputation and the public's perception of both the Department and Mountain View, creating less than "satisfactory and harmonious working relationships with the public."

7b. **Re: CONDUCT UNBECOMING:** Unlike the analysis in Paragraph 7a, above, where it was sufficient to simply demonstrate the impact of the arrest itself, and the resulting publicity, on the perception of the public and law enforcement personnel, in order to prove "conduct unbecoming an employee in the State service," the Department is required to prove that the Grievant engaged in some conduct that could be characterized as inappropriate or "unbecoming." While that could have been accomplished by presenting evidence to prove the charge of assault, or to show that the Grievant was responsible for the contraband found in his home, the Department did neither. The record

contains insufficient evidence to establish the charge of “conduct unbecoming an employee in the State service.”

7c. **Re: SERIOUS DISRUPTION OF THE INSTITUTION’S OPERATION:**

The Department argued that the Grievant’s arrest, and subsequent unavailability for work the following day, caused management to make arrangements to cover his shift on January 5, 2008. While that may have been an unwelcome inconvenience, the Department failed to show how his one-day absence *seriously* disturbed or disrupted the normal operation of the facility or the Department, as contemplated by Rule 1120-10-.06(12).

8. **Re: THE GOOD OF THE SERVICE:** This case is largely one of perception, i.e., what the Grievant’s colleagues and the community believe about him, based on his reputation and media accounts of his activities. Unfortunately, the Grievant’s reputation and negative media publicity seriously impaired his usefulness to the Department, and rendered him a liability to his employer. The Grievant was employed as a Children’s Services Officer, a position that requires adherence to a high sense of duty and standard of conduct, and must command the respect and confidence of other employees of the Department and local law enforcement agencies with whom the Department interacts, as well as the public at large. Allegations of criminal conduct and the attendant publicity have cast doubt on the Grievant’s trustworthiness in the eyes of his colleagues, his superiors, local law enforcement agencies, the populations served by the Department, and the community surrounding the facility in which he worked.

8a. “An appointing authority⁹ may dismiss any employee in the authority’s division when the authority considers that the good of the service will be served thereby.” *Tennessee Code Annotated* § 8-30-326.¹⁰ The widespread negative publicity related to the accusations of assault and the discovery of illegal substances in his home at the time of his arrest, the resulting damage to the reputation of the Grievant and the image of the

⁹ In this case, the appointing authority is the Commissioner of the Department of Children’s Services.

¹⁰ See also, Rule 1120-10-.06(24), TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Personnel*.

Department, the Department's inherent loss of confidence in and respect for the Grievant's judgment and efficacy, the negative impact of his continued employment on the Department's mission, and the potential danger he posed to the children served by the Department, all weigh heavily in favor of dismissal from employment as the appropriate sanction in this case, "for the good of the service." As the courts have previously observed:

It must be conceded that the public payroll cannot be made a haven for those who **with or without fault** have become unable to perform the duties for which they were employed. It must likewise be conceded that **"the good of the service" may in proper cases justify or require the discharge of public employees when their efficiency or usefulness in their positions has been seriously impaired by their own fault, by the fault of others, or by blameless misfortune.**

Reece vs. Tennessee Civil Service Commission, 699 S.W.2d 808, 813 (Tenn. App. 1985).

8b. The facts in the *Reece* case are indistinguishable from those in the instant case. Reece was a prison guard whose state employment was terminated following an arrest for illegal drug activity. *Although he was not convicted of the offense, and the record of the administrative hearing contained no evidence of the Grievant's guilt*, the Tennessee Court of Appeals upheld his termination, finding that the publicity surrounding his arrest had rendered his continued employment untenable. The Court framed the issue as follows:

Where the statute authorizes discharge "for the good of the service," may an employee be discharged without a finding of some misconduct on his own part, and solely upon the basis of impairment or destruction of his usefulness by factors independent of his misconduct?

Reece, 699 S.W.2d at 813.

After acknowledging the difficulties inherent in resolving such an issue, the Court noted the need to balance two competing interests:

The determining factor is which of two considerations predominate: (1) the right of the State to maintain an efficient, effective correction institution for the protection of the public, or (2) the right of the individual employee to retain his position until he has been proven guilty of misconduct. It is the view of this Court that the first consideration must prevail over the second.

* * *

The members of the Court sympathize with any employee who may be discharged without proof of misconduct, but the interest of the public requires this sacrifice of public employees **when their usefulness has been seriously impaired with or without fault.**

Id. at 813. [Bold emphasis added.]

As outlined above, the Grievant's usefulness as a Children's Services Officer with the Department was seriously impaired by the media's reports of the circumstances surrounding his arrest in January 2008, and the resulting impact on his reputation. Following the reasoning of the *Reece* Court, the Grievant was thereby rendered subject to dismissal from his position "for the good of the service," without regard to who may have been responsible for the negative publicity.

9 When the Commissioner considered the issue of sanctions in this case, she had a wide range of options at her disposal. (*See*, Rule 1120-10-.07, TENN. COMP. R. & REGS.) Dismissal from employment is one of those options. Rule 1120-10-.07(5), TENN. COMP. R. & REGS. "A career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority. . ." Rule 1120-10-.02, TENN. COMP. R. & REGS. Although the law prescribes implementation of progressive discipline for State employees, it also provides that disciplinary action must be administered at the step which is most appropriate for the misconduct. (*See, Tennessee Code Annotated* § 8-30-330; and Rule 1120-10-.07, TENN. COMP. R. & REGS.) As the courts have recognized in other cases dealing with these provisions:

. . . the key word in the statute is 'appropriate.' . . . (T)he language of these provisions does not mandate application of discipline in a routine fashion without regard to the nature or severity of the behavior it is intended to address. The supervisor has discretion to determine what punishment fits the offense.

Berning v. State, 996 S.W.2d 828, 830 (Tenn. App. 1999).

In this case, over a relatively short tenure with DCS, the Grievant had been disciplined five times by lesser sanctions, including a written warning, a three-day suspension, and three (3) five-day suspensions. The current case warranted a more severe sanction. In

light of the Grievant's violations of the *DCS Policy and Procedure #4.12* [See Paragraph 4, above] and the *Rules and Regulations of the Department of Personnel, 1120-10-.06* [See Paragraphs 6-7c, above], and "for the good of the service" [See Paragraphs 8, 8a & 8b, above], the Grievant's dismissal from the State's employment is an appropriate sanction, and is authorized by the current laws.

10. The issue presented for consideration in this case is: Whether the Department has proven, by a preponderance of the evidence, that the Grievant's dismissal from State employment was appropriate, and supported by the existing law. The Department has met its burden of proof; under the circumstances of this case, the Grievant's dismissal was both appropriate, and supported by the law.

IT IS THEREFORE CONCLUDED AND ORDERED that the Tennessee Department of Children's Services has met its burden of proof, and has established by a preponderance of the evidence that the Grievant's dismissal from his position as a Children's Services Officer was both appropriate, and supported by the law.

Accordingly, IT IS FURTHER ORDERED that the Commissioner's termination of the Grievant's State employment is upheld, and the Grievant's appeal of the Commissioner's decision is hereby DISMISSED.

Entered and effective this 22nd day of January, 2010.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 22nd day of January, 2010.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, sweeping initial 'T'.

Thomas G. Stovall, Director
Administrative Procedures Division